City of FRESNO **REPORT TO THE CITYCOUNCIL**

AGENDA ITEM NO. 1K
COUNCIL MEETING 05/06/10
APPROVED BY
DEPARTMENT DIRECTOR
CITY MANAGER

May 6, 2010

FROM: Fire Department

BY: RANDY R. BRUEGMAN, Fire Chief

SUBJECT: APPROVE INTER-AGENCY INSTRUCTIONAL SERVICES AGREEMENT BETWEEN THE CITY OF FRESNO AND THE SAN DIEGO COMMUNITY COLLEGE DISTRICT, MIRAMAR COLLEGE, FOR REIMBURSEMENT OF INSTRUCTIONAL TRAINING HOUR COSTS

RECOMMENDATION

It is recommended Council approve the Inter-Agency Instructional Services Agreement between the City of Fresno and the San Diego Community College District, Miramar College, for reimbursement of instructional training hour costs.

EXECUTIVE SUMMARY

The Fresno Fire Department (FFD) had a similar training reimbursement agreement with Fresno City College (FCC) in place since 1999. In November 2009, FCC notified FFD it would be terminating the agreement effective December 31, 2009, due to fiscal constraints. FFD staff began the process of seeking other agencies to replace FCC and was successful in negotiating an agreement with Miramar College. The initial term of the agreement begins on July 2, 2010, and continues for a period of five years. Funds received from this agreement will be reinvested into the firefighter training program for the services, facilities, materials, and equipment supplied.

BACKGROUND

In order to maintain professional skills of emergency response personnel, FFD strives to provide up to 240 hours of continuing education per member each year. This standard is consistent with Insurance Service office (ISO) requirements for rating fire departments.

FCC provides registration and college units for specialized training for the department's sworn, safety, firefighting personnel as part of monthly continuing education needs. In 1999, FFD entered into an agreement with FCC, which provided reimbursement for instructional training hours provided by FFD staff. Under the agreement, FCC offered approved educational courses through its various programs to meet the needs of the department, and the department provided instructors, facilitators, equipment, materials, day-to-day management support, and all other related overhead necessary to conduct FCC's affiliated education programs and was reimbursed a fee of $2.75 per hour less registration fees. In FY 2009, this provided $83,400 to support the costs of mandated training and, for the first six months of FY 2010 until contract termination in December, the department received $42,000. Loss of this funding source, which supplements minimal General Fund training resources, would severely impact the department's ability to provide even the minimum in mandated training.

Staff began the process of seeking other agencies to replace FCC and was successful in negotiating an agreement with Miramar College. Under the terms of the agreement, the department will receive $2.75 per firefighter instructional hour less registration fees for specific training per student contact hour for all services, facilities, materials, and equipment supplied. These reimbursements are used to supplement the department's General Fund firefighter training program to provide for services, facilities, materials, and equipment. The initial term of the agreement begins on July 2, 2010, and continues for a period of five years.

Revenues related to reimbursement for training purposes from this agreement are estimated between $80,000 and $90,000 annually.

FISCAL IMPACT

There is no new net fiscal impact to the General Fund.

RRB/CC/mc 042110/042910

Agreement

INTER-AGENCY INSTRUCTIONAL SERVICES AGREEMENT
(In-Service Training)

This Agreement is hereby entered into between the San Diego Community College District, Miramar College, 10440 Black Mountain Road, San Diego, California 92126, hereinafter referred to as "District," and the City of Fresno, a California municipal corporation, 2600 Fresno Street Fresno, CA 93721, hereinafter referred to as "Agency."

RECITALS

WHEREAS, District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice, if such persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, District is in need of such special services expertise and instruction by contract with Agency; and

WHEREAS, Agency has personnel in its Fire Department ("FFD") who meet the District minimum or equivalent qualifications for part-time Fire Technology Instructors pursuant to contract in accordance with the provisions of Title 5 of the California Code of Regulations Section 58058, subdivision (b); and

WHEREAS, District is authorized by Section 70902 of the Education Code to establish and approve courses of instruction and educational programs; and

WHEREAS, District has comprehensive educational programs including programs pertaining to fire technology; and

WHEREAS, District wishes to maintain and expand such programs.

NOW, THEREFORE, the parties agree as follows:

1. RECITALS. The above Recitals are incorporated in full into the terms of this agreement.

2. SCOPE OF WORK.

   Agency agrees to provide District instruction subject to the primary right of District to control and direct the activities of all persons furnished by Agency during the term of the Contract, and subject to the requirement that District shall enter into a written contract with each person furnished by Agency specifying the terms and conditions of the work to be performed for District, including salary and other compensation, nature of work to be performed, and employment classification. Agency's Scope of Work is further defined in Attachment A which is attached hereto and incorporated herein by this reference.

3. TERM.

Agency shall commence providing services under this Agreement on July 2, 2010, and will diligently perform as required for a period of Five Years from the date this Agreement is signed by both parties.

4. COMPENSATION.

FFD shall be paid a fee of $2.75 (two dollars, seventy five cents) per student contact hour for all services, facilities, materials and equipment it supplies.

Agency shall reinvest the above paid set fees back into the student training program for all services, facilities, materials and equipment it supplies.

Agency shall invoice the District quarterly, supplying any and all documentation as may reasonably be requested by District substantiating to the District student contact hours during the quarter.

5. TUITION AND ENROLLMENT FEES ASSOCIATED WITH COURSE WORK.

Agency shall pay to District all tuition and enrollment fees associated with course work undertaken by Agency Instructors. The Agency will be exempt from Student Accident Insurance Fees, Student Health Fees, and Student Representation Fees.

6. EXPENSES.

Unless otherwise mutually agreed in writing, District shall not be liable to Agency for any costs or expenses paid or incurred by Agency in performing services for District pursuant to this Agreement.

7. FACILITIES.

Agency and District agree that the courses shall be held at facilities that are clearly identified as being open to the general public in accordance with Title 5 of the California Code of Regulations Section 58051.5.

8. OPEN ENROLLMENT.

District and FFD agree that enrollment in the courses must be open to any person who has been admitted to the College and has met any applicable prerequisites in accordance with Title 5 of the California Code of Regulations Sections 51006 and 59106. District and FFD shall abide by the District's policy on open enrollment published in the District's college catalog and schedule of classes along with a

description of the course and information about whether the course is offered for credit and is transferable in accordance with Title 5 of the California Code of Regulations Section 55005.

9. SUPPORT SERVICES FOR STUDENTS.

FFD and District shall take all reasonable and necessary steps to insure that ancillary and support services are provided for all students as described in Attachment A.

10. INDEPENDENT CONTRACTOR.

Agency, in the performance of this Agreement, shall be and shall act as an independent contractor. Agency understands and agrees that all of its employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Agency assumes the full responsibility for the acts and/or omissions of its employees, instructors, or agents as they relate to the services to be provided under this Agreement. Nothing in this Agreement shall give the Agency authority with respect to any District decision beyond the rendition of information, advice, recommendation, or counsel except as otherwise provided herein. Agency is not authorized to make any representation, contract or commitment on behalf of District. The foregoing notwithstanding, pursuant to Title 5 of the California Code of Regulations, Section 58058, subdivision (b), the District is contracting with Agency for instruction to be provided by agency. Therefore, this Contract hereby specifies that the District has the primary right to control and direct the activities of the persons furnished by FFD during the term of this Contract. In addition, the District shall enter into a written contract with each Agency instructor in accordance with Title 5 of the California Code of Regulations, Section 58058, subdivision (b), but as provided therein the instructor shall continue to be an employee of Agency, and as such Agency shall retain all liabilities and employment responsibilities associated with such instructors.

11. TAXES.

Agency acknowledges and agrees that it is the sole responsibility of Agency to make the requisite tax filings and payment to the appropriate federal, state or local tax authorities. No part of Agency's compensation shall be subject to withholding by District for the payment of social security, unemployment, or disability insurance or any other similar state or federal tax obligation.

12. MATERIALS.

Agency shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as expressly agreed otherwise in writing and herein.

13. CONFIDENTIALITY AND USE OF INFORMATION.

(a) Except as required by law, Agency shall hold in trust for the District, and shall not disclose to any person, any confidential information. Confidential information is information which is related to the District's research, development, trade secrets, business affairs, student records and any other materials the District is required to maintain as confidential; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.

(b) Agency shall advise District of any and all materials used; or recommended for use by Agency to achieve the instructional goals, that are subject to any copyright restrictions or requirements. In the event Agency shall fail to so advise District and, as a result of the use of any programs or materials developed or used by Agency under this Agreement, District should be found in violation of any copyright restrictions or requirements, or District should be alleged to be in violation of any copyright restrictions or requirements, Agency agrees to indemnify, defend and hold harmless, District against any action or claim brought by the copyright holder.

14. AUDIT AND INSPECTION OF RECORDS.

Except as otherwise expressly provided herein, at any time during the normal business hours and as often as District may deem necessary, Agency shall make available to District for examination at District's primary administrative offices, all data, records, investigation reports and all other materials related to matters covered by this Agreement, and Agency will permit the District to audit, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement.

15. WORKS FOR HIRE/COPYRIGHT/TRADEMARK/PATENT.

Agency understands and agrees that all matters produced under this Agreement for use in District courses shall be works for hire and shall become the sole property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent

of said matter in the name of the District. Agency consents to use of Agency's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

16. INSURANCE.

Agency may, with prior written consent of District, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. Agency's utilization of self-insurance shall not in any way limit liabilities assumed by Agency under the Agreement.

17. WORKERS' COMPENSATION INSURANCE.

Agency may, with prior written consent of District, fulfill some or all of the insurance requirements contained in this Agreement under a plan of self-insurance. Agency's utilization of self-insurance shall not in any way limit liabilities assumed by Agency under the Agreement.

18. HAZARDOUS MATERIALS.

Agency shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Agency agrees that it will not store any Hazardous Materials at any District Facility without prior approval of District Administrator of Agreement or in violation of the applicable site storage limitations imposed by Environmental Law. Agency agrees to take, at its expense, all action necessary to protect third parties, including, without limitation, employees, students, and agents of the District from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Agency agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the District of it. As used in this section, the term "Environmental Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or

substance giving rise to any liability, responsibility or duty upon the Agency or District with respect to any third person under any Environmental Laws.

19. ASSIGNMENT.

The obligations of the Agency pursuant to this Agreement shall not be assigned by the Agency.

20. DISTRICT'S RESPONSIBILITIES.

District agrees to undertake responsibilities with respect to Agency's services and Scope of Work during the term of the Agreement in accordance with Attachment B which is attached hereto and incorporated herein by this reference.

21. COMPLIANCE WITH APPLICABLE LAWS.

Agency agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Agency, Agency's business, equipment and personnel engaged in operations covered by this Agreement, or occurring out of the performance of such operations.

22. PERMITS/LICENSES.

Agency and all Agency's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

23. TERMINATION.

District or Agency may, on thirty (30) days written notice to the other party, with or without reason, terminate this Agreement, and District will compensate Agency only for services satisfactorily rendered to the date of termination. Written notice by either party shall be sufficient to stop further performance by the other party. Notice shall be deemed given when received by the party to whom it is addressed or not later than five (5) days after the day of mailing, whichever is sooner.

District may terminate this Agreement for cause, upon giving of written notice of intention to terminate for cause, and be relieved of any consideration to Agency should Agency fail to perform the covenants and services herein at the time and in the manner provided. Cause shall include but not be limited to: (a) material violation of this Agreement by the Agency; or (b) failure to maintain records and report to District as required by this Agreement. Written notice by District of termination for cause shall contain the reasons for such intention to terminate, and unless within fifteen (15) days after service of such notice the condition or violation shall cease, or arrangements satisfactory to District in its sole discretion

for the correction thereof be made, this Agreement shall upon the expiration of the fifteen (15) days cease and terminate. In the event of such termination, the District may secure the required services from another Agency or in any manner whatsoever that it deems appropriate. If the cost to the District of obtaining the services from another Agency or in some other manner exceeds the cost of providing the services pursuant to this Agreement, the excess cost shall be charged to and collected from the Agency. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District. Written notice by District shall be deemed given when received by the Agency or no later than five (5) days after the day of mailing, whichever is sooner.

24. MUTUAL DEFENSE AND INDEMNITY.

A. Claims Arising From Sole Acts or Omissions of District

The District hereby agrees to defend and indemnify the Agency, its agents, officers and employees (hereinafter collectively referred to in this paragraph as 'Agency') from any claim, action or proceeding against Agency, arising solely out of the acts or omissions of District in the performance of this Agreement. At its sole discretion, Agency may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve District of any obligation imposed by this Agreement. Agency shall notify District promptly of any claim, action or proceeding and cooperate fully in the defense.

B. Claims Arising From Sole Acts or Omissions of Agency

The Agency hereby agrees to defend and indemnify the District, its agents, officers and employees (hereafter collectively referred to in this paragraph as 'District') from any claim, action or proceeding against District, arising solely out of the acts or omissions of Agency in the performance of this Agreement. At its sole discretion, District may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve Agency of any obligation imposed by this Agreement. District shall notify Agency promptly of any claim, action or proceeding and cooperate fully in the defense.

C. Claims Arising From Concurrent Acts or Omissions

The District hereby agrees to defend itself, and the Agency hereby agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of District and Agency. In such cases, District and Agency agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph E below.

D. Joint Defense

Notwithstanding paragraph C above, in cases where District and Agency agree in writing to a joint defense, District and Agency may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of Agency and District. Joint defense counsel shall be selected by mutual agreement of District and Agency. District and Agency agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph E below. District and Agency further agree that neither party may bind the other to a settlement agreement without the written consent of both District and Agency.

E. Reimbursement and/or Reallocation

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, District and Agency may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

25. NONDISCRIMINATION IN EMPLOYMENT.

Agency agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, or a perception that a person has or is associated with a person who has, or is perceived to have, any of these characteristics.

26. NON -WAIVER.

The failure of District or Agency to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

27. ADMINISTRATORS OF AGREEMENT.

This Agreement shall be administered on behalf of, and any notice desired or required to be sent to a party hereunder shall be addressed to:

For District: San Diego Community College District
Patricia Hsieh, President, Miramar College
10440 Black Mountain Road
San Diego, CA 92126-2999

For Agency: City of Fresno Fire Department
Chief Randy R. Bruegman
911 "H" Street
Fresno, CA 93721

28. ENTIRE AGREEMENT - AMENDMENTS.

This Agreement and any attachments hereto constitute the entire agreement among the parties to it and supersede any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement.

29. NOTICE.

All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or if mailed on the fifth day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Agreement, the addresses of the parties are as set forth above.

30. SEVERABILITY.

If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

31. SUCCESSORS.

All terms of this Contract shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.

32. NEITHER PARTY CONSIDERED DRAFTER.

Despite the possibility that one party may have prepared the initial draft of this Contract or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Contract. In construing this Contract in case of any claim that any provision hereof may be ambiguous, no

such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.

33. CONFLICTS OF INTEREST.

Agency presently has no interest, including but not limited to other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. The Agency shall not employ any person having any such interest in the performance of this Agreement.

34. GOVERNING LAW.

The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in San Diego County, California.

35. WARRANTY OF AUTHORITY.

Each of the parties signing this Agreement warrants to the other that he or she has the full authority of the entity on behalf of which his or her signature is made.

SAN DIEGO COMMUNITY COLLEGE DISTRICT, MIRAMAR COLLEGE

By: _____
Patricia Hsieh, President

Dated: _____

CITY OF FRESNO, A CALIFORNIA MUNICIPAL CORPORATION

By: Randy R. Bruegman
Randy R. Bruegman, Fire Chief

Dated: _____

ATTEST:
REBECCA E. KLISCH
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: Nancy A. Algier 2/16/10
Nancy A. Algier Date
Senior Deputy

ATTACHMENT A

INTER-AGENCY INSTRUCTIONAL SERVICES AGREEMENT
SCOPE OF SERVICES
TO BE PROVIDED BY:
CITY OF FRESNO (AGENCY) FIRE DEPARTMENT (FFD)

AGENCY SCOPE OF WORK

1. **Direct Supervision of District Employee:** FFD may provide instruction under the direct supervision of District employees as defined in Title 5 of the California Code of Regulations, Section 58058, subdivision (b). Pursuant to Section 58058, subdivision (b), each individual instructor provided by Agency will continue to be an employee of Agency, while at the same time qualifying as an employee of the District.

2. **Instructor Qualifications:** All instructors provided by Agency shall meet the District's minimum or equivalent qualifications for part-time Fire Technology Instructors. This expertise is to be furnished to District by Agency at Agency's expense.

3. **Agency Equipment:** Agency shall furnish District any and all specialized equipment. Such equipment shall be maintained by Agency in safe and suitable condition for instructional use.

4. **Instructional Materials and Curriculum:** FFD shall only use courses of instruction that either have been approved by the District's Curriculum and Instruction Council or courses which have been accepted as topics courses and approved by the District's Chief Instructional Officer. FFD shall provide its own unique handouts and may provide facilities determined in advance to be acceptable to District. FFD handouts shall not be used for course work until approved by District.

5. **Student Contact Hours:** FFD shall be responsible to account for student contact hours and submit student contact hour information to District. FFD shall only submit student contact hours for courses of instruction that have met the Direct Supervision requirements of Section 1 above and the Curriculum requirements of Section 4 above.

6. **No Other Funding Sources:** Instructional hours, student contact hours, shall be conducted as full time equivalent students (FTES) under courses through the District's Fire Technology Department, and FFD hereby certifies that it will not submit any student contact hours to District which also have been or will be submitted for California Joint Apprenticeship Committee, JPTA funding or state sponsored colleges.

7. **Student Enrollment Forms and Fees:** FFD will use only District student enrollment forms which shall be supplied to it by District. FFD will assure District student enrollment forms are properly completed and District enrollment fees have been properly processed before FFD begins instruction. FFD recognizes that out-of-state tuition fees will be charged for students who are not California residents.

8. **Student Achievement and Attendance Records:** FFD shall maintain student attendance and achievement records and shall provide such records and make them available for review by an authorized District representative during normal business hours. All such records shall be provided by FFD to District on a routine schedule as mutually agreed to by District and FFD.

9. **Planning, Coordination and Review of Instructional Activities:** FFD's authorized representatives shall meet with District's authorized representatives or their respective designees at reasonable times and intervals to plan, coordinate and review class hours and instructional programs to assure that performance objectives are met, schedules are coordinated and budgets are appropriate for all instructional activities. FFD agrees that no instructional activity, instructional supervision, evaluation of students, or withdrawal of a student prior to completion of a course shall be undertaken by FFD without previously meeting with District to plan, coordinate and review class hours and instructional programs as provided herein.

10. **List of Course(s) Or Course Topics:** FFD will rely on the District's comprehensive list of all courses set forth in District's course catalog and additional topics classes listed by District and approved by District in accordance with District standards for curriculum adoption.

11. **Different Sections of Courses:** FFD shall follow District's procedures that insure that FFD instructors and other faculty teaching different sections of the same course teach in a manner consistent with the District's approved outline of record for the course. Students in different sections of the same course shall be held to a comparable level of rigor.

12. **Ancillary and Support Services:** FFD will take all necessary steps to insure that ancillary and support services provided by District such as counseling, guidance, and placement assistance are available to all students and that enrollment in courses conducted by instructors provided by FFD is open to any person who has been admitted to the District's colleges and has met applicable pre-requisites.

13. **District Responsibilities:** FFD will thoroughly familiarize itself with Attachment B and District's Responsibilities. FFD will work cooperatively with District and assist District as necessary and reasonably appropriate to assure that FFD does not perform any of its services in a manner that is inconsistent with District's Responsibilities.

ATTACHMENT B

INTER-AGENCY INSTRUCTIONAL SERVICES AGREEMENT
RESPONSIBILITIES OF
SAN DIEGO COMMUNITY COLLEGE DISTRICT, MIRAMAR COLLEGE (DISTRICT)

DISTRICT'S RESPONSIBILITIES:

1. **Job Market Study:** As a prerequisite to the performance of any services under this Agreement, and before District's establishment of the vocational or occupational training program which is the subject of this Agreement, as provided by the California Education Code the District's Governing Board shall have conducted a job market study of the labor market area to determine that the results justify the proposed vocational education program. (Education Code Section 78015 and following.)

2. **Educational Program and Program Location:** District is responsible for the educational program that will be conducted at District Board approved off site locations. Conduct of the educational program which is the subject of this Agreement at Agency facilities shall be undertaken only if such facilities are determined in advance to be acceptable to District.

3. **Supervision and Control:** The instruction to be claimed for apportionment under this contract shall be under the immediate supervision and control of a District employee as defined under Title 5 of the California Code of Regulations Section 58058, subdivision (b) who has met the minimum qualifications for instruction in a vocational subject in a California community college.

4. **Instructor Who Is Not a District Employee - District's Responsibilities:** Where Agency's instructor is not a paid employee of the District; the District shall have a written agreement with each such instructor who is conducting instruction for which Full Time Equivalency Students ("FTES") are to be reported. The Agreement shall state that the District has the primary right to control and direct the instructional activities of Agency's instructor in accordance with Title 5 of the California Code of Regulations Section 58058, subdivision (b).

5. **Qualification of Instructors:** District shall list the minimum qualifications for Agency instructors teaching these courses. Such qualifications shall be consistent with requirements in other similar courses given within the District.

6. **District's Control of and Direction for Instructors:** District shall provide each Agency instructor with an orientation, instructor's manual, course outlines, curriculum materials, testing and grading procedures, and any of the other necessary materials and services that it typically provides to its hourly instructors on campus.

7. **Courses of Instruction:** Courses of Instruction are specified in Attachment A to this Agreement. It is the District's responsibility to insure that the outlines of record for such courses are approved by the District's curriculum committee as meeting California Code of Regulations Title 5 course standards, and that the courses have been approved by the District Governing Board.

8. **Different Sections of Courses:** District shall have procedures that insure that faculty, including Agency instructors, teaching different sections of the same course teach in a manner consistent with the approved outline of record for the course. Such procedures apply to the Agency instructors and courses that are the subject of this contract, and the students shall be held to a comparable level of rigor.

9. **Enrollment:** District will advise Agency of the enrollment period, student enrollment fees, the number of class hours sufficient to meet the stated performance objectives, policy regarding the supervision and evaluation of students, and the procedure applicable to the withdrawal of students prior to completion of a course or program.

10. **Obtaining Approval of Degree and Certificate Programs Is District's Responsibility:** It is required that degree and certificate programs have been approved by the State Chancellor's Office and courses subject to this Agreement that make up the programs must be part of the approved programs, or District must have received delegated authority to separately approve those courses locally.

11. **Classes Held Outside of District:** If the classes are to be located outside the boundaries of the District, the District must comply with the requirements of Title 5 of the California Code of Regulations section 55301 concerning approval by adjoining high school or community college districts and use of non-District facilities.

12. **Funding Source:** District shall certify that it does not receive full compensation for the direct education costs of the course from any public or private agency, individual, or group.

13. **Certification:** District is responsible, in accordance with Title 5 of the California Code of Regulations, Section 58051.5, for obtaining certification verifying that the instruction activity to be conducted will not be fully funded by other sources.